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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of

Amendment of Part 73 of the
Commission's Rules to Provide
Standards for "Special Signal"
Use of Line 22 of the Television
Broadcast Signal

) MM 95-42
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) RM-7567
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To: The Commission

JOINT REPLY OF AIRTRAX AND VIDCODE

Airtrax and VidCode, by their attorneys, hereby reply to the Comments submitted in this proceeding by A.C. Nielsen Company ("Nielsen"), the Association for Maximum Service Television ("MSTV"), and the National Association of Broadcasters ("NAB"). For the reasons set forth in the above captioned Petition for Rulemaking,¹ and as noted in this Reply, Airtrax and VidCode urge the Commission to proceed with a rulemaking to establish a regulatory framework that fosters competition and the development of technologies designed to maximize efficient use of the scarce spectrum resource embodied by Line 22 of the broadcast television signal.

¹ Airtrax Petition for Amendment of Part 73 of the Commission's Rules to Provide Standards for "Special Signal" Use of Line 22 of the Television Broadcast Signal, (April 9, 1990) (the "Petition").

As explained in the Petition and as acknowledged by Nielsen, Line 22 offers clear advantages over the use of lines in the vertical blanking interval ("VBI") because of the possibility that signals in the VBI will be stripped out during the process of dubbing from one tape to another. Signals on Line 22 can be used to alert stations as to the lineup of programs about to be fed by a network, facilitate automated program identification, and provide automated commercial identification. Automated program identification data can be used to ascertain programs watched by a viewer participating in a ratings survey. Automated commercial verification offers independent confirmation of the time a given commercial was broadcast, and provide necessary information to broadcasters identifying the commercials being aired by the medium. Such information can then be used, for example, to expedite payment to broadcasters for the airing of commercials.

Historically, Nielsen used its Line 20 AMOL technology to provide stations automatically the lineup of programs about to be fed down a network circuit. Line 20 worked for this purpose because stations seldom needed to record the programs while maintaining the AMOL information. Nielsen, however, now asserts that use of AMOL technology to identify programs and commercials as broadcast necessitated the use of

Line 22 if the risk of deletion of the encoded signal was to be avoided.

Line 22 has thus become a unique and scarce spectrum resource. As a practical matter, it is more robust than lines that are part of the VBI. It is also more desirable than other lines that are part of the active video since it is masked by overscanning and, therefore, not seen by a typical viewer.²

Nielsen, however, would have the Commission believe that AMOL is not incompatible with other uses of Line 22. See Nielsen Comments at 6. At the same time, Nielsen admits -- apparently for the first time in this dispute -- that its AMOL system operates on Line 22 in such a manner that "only one party may encode on Line 22 of a particular program or commercial at a given time." Id. This is the very definition of incompatibility. It underscores the need for policies concerning use of this scarce resource to be developed in a rulemaking.

As a spectrum resource, Line 22 presents an assignment problem analogous to that faced by the Commission in other

² Although Line 21 is now by definition part of the VBI, it was chosen for closed captioning for the same reasons as are now apparent with Line 22. Line 21, like Line 22, is less likely to be stripped out during the broadcast process. Moreover, Line 21 has been in use for several years without objection. As a practical matter, if Line 21 is not visible, it is also very unlikely that Line 22 will be visible even on so-called "modern" sets. See TV Captioning for the Deaf, 39 Rad. Reg. 2d (P & F) 299 (1976).

areas. For example, in the public air-ground service, the Commission elected to implement regulations that opened up the allocated spectrum to many different providers who would each have access to a common block of channels.³ A rulemaking would afford an opportunity to develop policies that would achieve a comparable public benefit in the use of Line 22.

By contrast, the "do nothing" approach Nielsen advocates would effectively leave one service provider on Line 22 -- not because of its technical superiority, but because of its extraordinarily entrenched position. By virtue of the fact that ratings are the life blood of commercial television, Nielsen is positioned to leverage its market power so as to present a barrier to other users of Line 22 even if broadcasters deem such other uses desirable. Moreover, by virtue of this power, Nielsen can move from ratings information to the provision of commercial verification services.

Airtrax and VidCode are not advocating that Nielsen be precluded from providing such services. Rather, we urge that Commission policies governing the use of Line 22 not foreclose competition in the provision of such services by

³ See Amendment of the Commission's Rules Relative to Allocation of the 849-851/894-896 MHz Bands, 5 FCC Rcd 3861 (1990).

failing to establish rules that create an open environment where new Line 22 technologies and systems can compete.

Allowing Nielsen to move its system to Line 22 without attempting to facilitate access by competitors is inconsistent with all these interests. Worse still, this will allow Nielsen to use both Line 20 and 22, effectively blocking simultaneous transmissions of all competing signals.

With the development of multiple competing and incompatible uses for Line 22, the time has come for the Commission to establish regulations that favor no single system or service provider and lead to the efficient use of the scarce Line 22 resource. Piercing through all of Nielsen's procedural nitpicking,⁴ this is the essential

⁴ The cases and argument leveled by Nielsen against Airtrax's Petition on a procedural basis are entirely inapposite. For example, in TV Channel Assignment for Newark, New Jersey, 29 Rad. Reg. 2d (P & F) 1473, the petitioner had submitted a two-page pleading "so short as to be bereft of substance." Id. at 1474. In fact, in Newark, the Commission described the requirements of Section 1.401(c) as "one who seeks the commencement of a rule making proceeding must set forth sufficient supportive material to establish that the public interest would be served by the proposal offered." Id. at 1473.

The Cable Television Syndicated Program Exclusivity and Carriage of Sports Telecast, 56 Rad. Reg. 2d (P & F) 625 (1984), case also is irrelevant to Airtrax's petition. In this case, petitioner's request was dismissed as redundant because the Commission has recently reconsidered, and upheld, the rules in question. The Commission also noted that the requested relief was, in any event, beyond its delegated authority.

(continued...)

purpose of the Airtrax petition. It is not only Airtrax and VidCode who urge this goal, but the NAB as well.⁵ Only Nielsen opposes maximized access by competing systems. It does so not in the name of any identifiable public interest but for its own economic reasons, purposes which are inherently inconsistent with the policies of the FCC to promote competition and innovation in the public interest.⁶

⁴(...continued)

Finally, Nielsen's citation to EMP Effects, 1 FCC Rcd 1126 (1986), recon. denied, 2 FCC Rcd 2739 (1987), is patently absurd. In EMP Effects, the question of standards was under consideration by known and well-reputed industry standards committees -- both ANSI and the National Security Telecommunications Advisory Committee.

Thus, notwithstanding Nielsen's arguments to the contrary, Airtrax has complied with the basic requirements for a valid rulemaking request. Airtrax has identified a classical allocation problem requiring Commission action in the face of ad hoc regulations tending to foreclose competition for valuable and needed communications services.

⁵ While expressing concern over the use of Line 22, NAB recognizes that demands for its use are likely to increase and may exceed capacity. NAB at 2-3. NAB also sees the need to make efficient use of Line 22. The other respondent, MSTV, would throw all encoding systems (including Nielsen) off Line 22 altogether. Underscoring MSTV's position is a concern that limited access to Line 22 promotes pressure to move into Lines 23 and 24. More efficient use and equitable access to Line 22 reduces such pressure and therefore promotes the interests MSTV seeks to serve.

⁶ See, e.g., 47 U.S.C. § 157(a) (1989) ("It shall be the policy of the United States to encourage the provision of new technologies and services to the public. Any person or party (other than the Commission) who opposes a new technology or service proposed to be permitted under this chapter shall have the burden to demonstrate that such proposal is inconsistent with the public interest."); 47 U.S.C. § 303(g) (1989) (The Commission shall "encourage the
(continued...)

In short, with the advent of multiple competing uses of Line 22, there is a growing need for a regulatory framework that:

- ° Achieves optimally efficient use of line 22;
- ° Avoids use of other portions of the active video;
and,
- ° Encourages the development of technology.

Nielsen need not be hobbled by Commission actions that meet these goals in the context of a rulemaking. The Nielsen special temporary authorization can continue to be renewed throughout the pendency of any such proceeding. Moreover the proceeding can take various forms.

Airtrax suggested that this matter would be a good situation in which to encourage a "negotiated regulation." Petition at Attachment A. If the Commission seeks additional information, it could initiate an inquiry to be followed promptly by a rulemaking. The procedural vehicles may vary, but the goal should be to create an environment in which the current and future players know the rules of the game and have a genuine opportunity to compete. Rules that achieve this end may focus on equipment authorization (e.g., a read before overwriting capability), the amount of Line 22 that

⁶(...continued)
larger and more effective use of radio in the public interest").

may be used, or other aspects. Absent a rulemaking proceeding, however, the Commission will not have adequately addressed the problem and would-be service providers and inventors will face a situation in which Nielsen holds a virtual lock on the use of Line 22.

CONCLUSION

Standards can be a spur to competition and to innovation. By adopting regulations that open up Line 22 to greater access now and in the future, the Commission will foster a healthy competitive environment that serves the interests of broadcasters and the public they serve. Accordingly, for the reasons set forth herein, Airtrax and

VidCode urge the Commission to grant the Airtrax petition and to move forward with the requested rulemaking proceeding.

Respectfully submitted,

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